

the 8 October 23 7:50pm
TESTE: LILLIE M. HART, CLERK
By Byr D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA,

Chesapeake Case Nos.: CR03-3089
CR03-3090
CR03-3091

v.

Fairfax Case No: K102888
Hon. Jane Marum Roush

LEE BOYD MALVO,

Defendant

**NOTICE AND MOTION FOR DAILY AND/OR EXPEDITED
TRIAL TRANSCRIPTS FROM THE TRIAL OF JOHN ALLEN MUHAMMAD**

PLEASE TAKE NOTICE that on October 22, 2003, at 10 a.m., or as soon thereafter as counsel may be heard, the Defendant, Lee Boyd Malvo, will move this court to order that transcripts of the trial of John Allen Muhammad be provided to the Defendant at the conclusion of each day of testimony. In support of this motion the Defendant states as follows:

1. That on October 14, 2003, the trial of John Allen Muhammad, an alleged co-defendant of Mr. Malvo, begins.
2. That many of the same witnesses in Mr. Muhammad's trial will testify in the Defendant's trial, scheduled to begin on November 10, 2003.
3. That due to the overlap of the two trials, Counsel for the Defendant will not be able to observe the testimony of persons who will also be witnesses in the Defendant's trial.
4. That statements made by the Prince William Commonwealth's Attorney in open court indicate that the prosecution theory in the John Allen Muhammad case will substantially parallel portions of Mr. Malvo's defense theory.

5. That the same witnesses in both trials will present testimony that implicates both Mr. Muhammad and Mr. Malvo for the same allegations under differing prosecution theories.

6. That a transcript of these witnesses' testimony is essential for cross examination by Counsel for the Defendant to ensure consistent testimony that does not differ solely because of the identity of the Commonwealth Attorney directing the examination or the defendant on trial.

7. That Va. Sup. Ct. R. 3.3 (4)(d) requires counsel to ensure that a fraud is not perpetrated upon the Court by a third party.

8. That the Sixth Amendment of the United States Constitution provides that Mr. Malvo shall have a right to confront and cross examine the witnesses against him. This right is substantially abridged without an opportunity for counsel to review transcripts of the witnesses from the trial of John Allen Muhammad and determine if testimony is being tailored to accommodate the facts sought in the trial of each of the co-defendants.

9. That the Fifth Amendment of the United States Constitution, and the Fourteenth Amendment (applying to states), guarantees Mr. Malvo a right to due process. Daily transcripts from the witnesses in the trial of John Allen Muhammad will ensure that Mr. Malvo is provided with a trial that is fundamentally fair regardless of which defendant is on trial or which Commonwealth Attorney is prosecuting the case.

10. That the production of daily trial transcripts may be introduced into evidence in the Defendant's trial to reduce costs and increase efficiency by curtailing the amount of time each witness is required to be housed and fed during the trial.

WHEREFORE, the Defendant respectfully requests this Honorable Court to order that daily trial transcripts be produced at the end of each day of testimony in the trial of John Allen Muhammad.

Respectfully submitted,
LEE BOYD MALVO

By: _____
Co-Counsel
and

By: _____
~~Co~~-Counsel

Michael S. Arif, Esquire
Martin, Arif, Petrovich & Walsh
8001 Braddock Road
Suite 105
Springfield, VA 22151
703-323-1200
703-978-1040 (Fax)
VSB No: 20999

Craig S. Cooley, Esquire
3000 Idlewood Avenue
P.O. Box 7268
Richmond, VA 23221
804-358-2328
804-358-3947 (Fax)
VSB No.: 16593

CERTIFICATE OF SERVICE

We/I hereby certify that a true copy of the foregoing Motion/Memorandum was hand-delivered to:

Robert F. Horan, Jr., Esquire
Commonwealth's Attorney
4110 Chain Bridge Road
Room 123
Fairfax, VA 22030

and the original was forwarded for filing to:

Hon. John T. Frey
Clerk
Fairfax County Circuit Court
Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, VA 22030-4009

and a true copy was forwarded to the

Hon. Jane Marum Roush
Judge
Fairfax County Circuit Court
Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, VA 22030-4009

this 8th day of October, 2003.

Co-Counsel

and

Co-Counsel